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GP181B



PATENT

Attorney Docket No.: A-54528-9/WHD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
BERMAN et al.)
Serial No. 08/459,141)
Filed: June 2, 1995)
For: VACCINE BASED ON)
MEMBRANE-BOUND PROTEINS)
AND PROCESS FOR MAKING)
THEM)

Examiner: L. SMITH

Group Art Unit: 1813

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CERTIFICATE OF MAILING

I hereby certify that this correspondence, including listed enclosures, is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231 on:

Dated: March 26, 1997

Signed: [Signature]
Margaret Joyce

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Assistant Commissioner
for Patents
Washington, DC 20231

Sir:

In satisfaction of the duty of disclosure under 37 C.F.R. § 1.56, and in accordance with the provisions of 37 C.F.R. §§ 1.97 and 1.98, Applicants wish to draw the attention of the U.S. Patent and Trademark Office to the References cited on the accompanying form PTO-1449. A copy of each reference is enclosed.

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The undersigned attended Oral Proceedings before the European Patent Office Board of Appeal for the European counterpart of the present application. Applicants had prevailed in an inter parties opposition proceeding concerning the European counterpart patent. In the Appeal from the opposition proceedings, Applicants again prevailed.

During the course of the oral proceedings, the Appellant/Opponent cited five references in support of a matter considered ancillary to the substantive issues in that case. These were as follows: Hitzeman et al., NAR 11(9), 2745 (1983); Wilson et al., Nature 289, 366 (1981); Brand et al., Nature New Biology 238, 145; Kleid et al., Science 214, 1125 (1981); and Rose et al., PNAS USA 78 (11), 6670 (1981).

The latter two references are cited as entries 55 and 4 on pages 53 and 49, respectively, of the specification of the present application.

In addition to the statement above as to their considered irrelevancy as to substantive matters in the European Appeal, in the further opinion of the undersigned, the references are not considered to be "material to patentability" as defined in 37 C.F.R. § 1.56, as to the subject matter of the allowed claims herein.

However, out of an abundance of caution, the undersigned herewith brings this matter to the attention of the USPTO, and further attaches a single sheet of Form PTO-1449, as well as copies of the five documents cited thereon.

The foregoing references are not believed to disclose the invention as claimed. Nothing herein shall constitute an admission concerning the contents of the cited reference, nor shall the inclusion of a reference herein be considered an admission that the reference

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constitutes prior art against the invention claimed in the above-identified application.

Submission of the present document shall not be construed as an admission that a search has been made or that better art does not exist.

Pursuant to 37 C.F.R. §1.97(c), enclosed is our check no. 89810 in the amount of \$230.00 as set forth in 37 C.F.R. §1.17(p).

The Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 06-1300 (Our Order No. A-54528-9/WHI). An additional copy of this document is enclosed.

Respectfully submitted,

FLEHR, HOHBACH, TEST,
ALBRITTON & HERBERT

Dated: March 26, 1997

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